

VIRGAL M. TAYLOR
ELIZABETH HUTTON

IBLA 80-217
80-309

Decided August 25, 1980

Appeals from decisions of the Idaho and California State Offices, Bureau of Land Management, declaring void lode mining claims I MC-45270 through I MC-45272, and CA MC-60505 respectively.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--Mining Claims: Location--Mining Claims: Recordation

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

APPEARANCES: Virgal M. Taylor, pro se; Elizabeth J. Hutton, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Virgal M. Taylor and Elizabeth Hutton, hereinafter appellants, appeal from November 14, 1979, and December 19, 1979, decisions of the Idaho and California State Offices, Bureau of Land Management (BLM), returning as untimely filed copies of the location notices of

appellants' mining claims. 1/ The cases are consolidated because of similar issues.

The claims concerned in IBLA 80-217 were located on July 2, 1936. The IBLA 80-309 claim was located May 20, 1961. Appellants' notices of location and service fees were not received by BLM until October 23 and October 24, 1979, respectively. In their statements of reasons, appellants state that they feel they submitted the necessary documents in sufficient time to have been received by BLM by October 22. 2/ Appellants allege that the documents took an inordinate amount of time to reach BLM due to some failure on the part of the postal service.

[1] Appellants implicitly admit through their statements that they were aware of the date by which the documents had to be submitted. The applicable statute, 43 U.S.C. § 1744 (1976), states in part: "(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection * * *." The statute was implemented by 43 CFR 3833.1-2(a) which provides as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, * * * located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM) Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Appellants had until October 22, 1979, to record a copy of the location notices with BLM. Under section 3833.1 2, filing is accomplished when the documents are delivered to and received by the proper office. The documents should have been mailed so that they would be received and date stamped by the required date. See Norman E. Brooks, 48 IBLA 16 (1980).

1/ Virgal M. Taylor's mining claims, IBLA 80-217, are the Buck Horn No. 1 through No. 3, I MC 45270-2. Elizabeth Hutton states that the Echo Lode Mining Claim, CA MC 60505, IBLA 80-309, is owned by her mother, Louise C. Falconer, age 83.

2/ Neither appellant attests to a date of mailing. In Taylor's undated letter transmitting the filings to BLM, he states: "Sorry to be late but getting things copied for filing is kinda hard to do." The record of the Hutton appeal contains the transmittal envelope. According to the return address on the envelope, it may have been mailed by Odda W. Hutton, rather than appellant. The envelope is postmarked "Bishop, CA PM OCT 22 1979."

Departmental regulation, 43 CFR 3833.4(a), provides: "(a) The failure to file an instrument required by §§ 3833.1-2(a) * * * within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

The owners of the claims herein, having failed to file location notices with BLM by October 22, 1979, under statute and regulation, the claims must be deemed to be abandoned and null and void. Neither FLPMA nor the regulations permit the Department any leeway in application of the penalty for failure to file the required information. Frank Otegui, 49 IBLA 40 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Joseph W. Goss
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

